

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1935.02
COMPLAINT INVESTIGATOR:	Connie Rahe
DATE OF COMPLAINT:	July 15, 2002
DATE OF REPORT:	August 13, 2002
REQUEST FOR RECONSIDERATION:	yes/revised September 13, 2002
DATE OF CLOSURE:	October 17, 2002

COMPLAINT ISSUES:¹

Whether the Valparaiso Community Schools and the Porter County Education Interlocal violated:

511 IAC 7-27-4(c) with regard to the school's failure to ensure that the case conference committee developed an IEP for the student who is eligible for special education and related services under Article 7.

511 IAC 7-18-2(a)(1) and (2)(A) and (B) and (3) with regard to the school's failure to provide a free appropriate public education to the student who is 19 years old and identified as disabled, and who has not completed high school graduation requirements and received a diploma.

511 IAC 7-22-1(a) with regard to the school's failure to explain the notice of procedural safeguards to the parents at the May 2, 2002, case conference committee meeting.

511 IAC 7-25-6(a) with regard to the school's failure to re-evaluate the student every 36 calendar months.

511 IAC 7-25-3(k) with regard to the school's failure to evaluate the student before determining the student is no longer a student with a disability, except when termination of eligibility is due to graduation with a regular high school diploma or exceeding the age of eligibility under Article 7.

511 IAC 7-28-3(c)(1-7) with regard to the school's failure to include the student in the case conference committee when the purpose of said conference is to discuss transition services, and with regard to the school's failure to review the areas addressed in the statement of needed transition services.

FINDINGS OF FACT:

1. The Student is 19 years old, has attended grade 12, and is eligible for special education and related services under the category of severe mental disability with communication disorder and other health impairment. No guardianship has been established for the Student; however, the School appointed the Complainants to serve in an advisory educational surrogate parent capacity. The Student retains all educational decision making authority.

¹ The Complainants originally alleged the School's noncompliance with various components of 511 IAC 7-28-3, but withdrew the allegations during the course of the investigation.

2. CCC meetings were convened on May 2 and June 4, 2002, to develop an IEP. However, these meetings were held without the Student in attendance, or otherwise participating. At the time of these CCC meetings, the Student was 19 years old. A proposed IEP resulted from these CCC meetings, but no agreed upon IEP has been finalized.
3. The Complainants assert that the Student is being denied a free appropriate public education based on staff comments at the May 2 and June 4, 2002, CCC meetings indicating that the Student has completed her high school program. No change of placement was agreed upon at the May and June CCC meetings.
4. The Complainants assert that the School failed to offer an explanation of the procedural safeguards to them at the May 2 and June 4, 2002, CCC meetings. The paperwork for these meetings indicates that the Complainant signed a statement that the School had offered an opportunity to discuss and review, for the purpose of understanding, and have accepted, a copy of the *Procedural Safeguards*.
5. The CCC determined that no additional evaluations were needed at previous re-evaluation anniversaries.. The May 2 and June 4, 2002, CCC report indicated that the Complainant signed page 13 which states, *based on all available data, the CCC determines that the student continues to be eligible for special education services and no evaluation data are required at this time.* Page 13 also has the reevaluation due date listed as May 8, 2004. The Supervisor has stated to the Division that the Student will require evaluation before she exits the high school program. The Student remains eligible for special education and related services.
6. The Complainants contend that the School failed to include the student in the CCC when the purpose of said conference is to discuss transition services. CCC meetings were convened on May 4, 2000; May 5, 2001; and May 2 and June 4, 2002. One of the purposes of each of these meetings was to discuss needed transition services. Notice of each of these CCC meeting was provided to the Student and the Complainants. The Student did not attend any of these CCC meetings. The Student attained the age of majority prior to the May 5, 2001, CCC meeting. The Complainants interpreted the notice to the Student as indicating the CCC meeting was to address the Student's needs, while the School reported that the Complainants were allowed to determine if the Student would be in attendance.

CONCLUSIONS:

1. Pursuant to 511 IAC 7-28-4, a student who attains 18 years of age and for whom no guardianship is obtained, has all the rights that were formerly afforded to the student's parent under the IDEA and Article 7. 511 IAC 7-27-4(c) requires a properly constituted CCC to develop, review, and revise a student's IEP. Findings of Fact #1 and #2 reflect that the Student is more than 18 years old and that no guardianship has been established. The Student was not present at the May 2 and June 4, 2002, CCC meetings as required by 511 IAC 7-27-3(a)(4), nor did the School make arrangements for the Student to participate by other means (e.g., telephone). A proposed IEP was developed at these CCC meetings, although no agreed upon IEP has resulted. In the absence of the Student's participation or indication that the Student actively declined to participate, the CCC was not properly constituted, and no IEP could be developed or agreed upon. Because the group that met in May and June 2002 developed a proposed IEP, a violation of 511 IAC 7-27-4(c) is found.
2. Finding of Fact #3 indicates that the Complainants do not contend that the School has not previously provided a FAPE for the Student, and because no IEP or change of placement has been agreed upon and signed by the Student, and the school year has not commenced, no violation of 511 IAC 7-18-2(a)(1) and (2)(A) and (B) and (3) is found.

3. Finding of Fact #1 indicates that the Complainants were appointed to serve in an advisory capacity to the Student as the educational decision-making authority accrued to the Student at the age of 18. Finding of Fact #4 reflects the Complainants' acknowledgement of the receipt of the notice of procedural safeguards and the opportunity to discuss and review. Therefore, no violation of 511 IAC 7-22-1(a) is found.
4. Finding of Fact #5 indicates that the CCC previously had determined no re-evaluations were necessary. The next reevaluation is due on May 2004. Therefore, no violation of 511 IAC 7-25-6(a) is found with respect to the 36-month reevaluation requirement. However, the Complainants' agreement at the May 2 and June 4, 2002, CCC meetings that no reevaluation is necessary cannot substitute for the agreement of the Student who has the educational decision-making authority.
5. Finding of Fact #5 reflects that no determination has been made to terminate the Student's eligibility for services, and the School acknowledges that an evaluation is required before making such a determination. Therefore, no violation of 511 IAC 7-25-3(k) is found.
6. 511 IAC 7-28-3(c) requires the School to invite the Student to any CCC meeting in which transition services are to be discussed. Finding of Fact #6 indicates that the School notified the Student of each of the case conference meetings. Therefore, no violation of 511 IAC 7-28-3(c)(1-7) is found. However, although the Student is not a required CCC participant prior to the age of 18, the Student becomes a required participant pursuant to 511 IAC 7-27-3(a) in the absence of guardianship, upon attaining 18 years of age. Convening the CCC in the Student's absence, or without making other arrangements for the Student to participate in 2001 and 2002, is contrary to 511 IAC 7-27-3.

The Department of Education, Division of Exceptional Learners requires the following corrective action, based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Valparaiso Community Schools and the Porter County Education Interlocal shall, in the absence of any guardianship obtained of the Student or affirmative refusal of the Student to participate, make arrangements for the Student to participate in a case conference committee meeting to develop an agreed upon IEP for the current school year. The school corporation and the planning district shall convene a CCC to develop a current IEP for the Student and shall submit documentation of the Student's participation in the CCC meeting, documentation of a court appointed guardian for the Student, or documentation of the Student's refusal to participate in the CCC meeting and the School's attempts to obtain that participation. Such documentation shall be submitted to the Division no later than October 1, 2002.